IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

MISCELLANEOUS PETITION NO.48 OF 2002

IN

PETITION NO.415 OF 1998

Baburao Krishna Mohite ...Petitioner.

vs.

Vaijanta Shankerrao Mohite & others. ...Respondents.

Mr.S.Vaishnawa with R.D.Dave i/b. M/s.N.N.Vaishnawa & Co., for Petitioner.

Ms.Nisha Valani, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 30th June, 2006.

P.C.:-

1. This petition has been filed for revocation of letter of administration granted by this Court. The petition for grant of letter of administration of the estate of the deceased Shankerrao Krishna Mohite was filed by one Smt.Vaijanta Shankarrao Mohite who also is no more. She claims to be widow of the deceased Shankarrao Mohite. The case of the present petitioner is that the name of the wife of the

deceased Shankarrao Mohite was Smt.Vaijanta. She died on 14.2.1993 at Bombay. The petitioner has annexed the copy of her death certificate. The contesting respondent in the present petition is respondent no.2 Ms.Sonal Ramchandra Deshmukh who claims that deceased respondent no.1 Vaijanta had adopted her before her death. The case of the present petitioner is that the deceased Vaijanta whose real name was Ranjana Shivaji Padekar was a maid servant working with the deceased Shankarrao Krishna Mohite and that Shankarrao Mohite never married with her. The basis of the present petition is that the deceased Respondent no.1 Vaijanta alias Ranjana was never legally married with Shankarrao Mohite. The affidavit has been filed on behalf of the Respondent no.3 admitting that the name of the wife of Shankarrao Mohite - the deceased was Vaijanta. It is also admitted that she died in the year 1993. It is then claimed that after the death of his wife, the deceased Shankarrao Mohite again married with the lady by name Usha who after her marriage was also named as “Vaijanta”. The Respondent no.2 is claiming through said Smt.Usha.

2. According to the petitioner, after the death of his wife, the deceased had never been married till he died on 10.7.1996. The entire claim of the respondent no.2 is based on only one fact that Smt.Usha, through whom the respondent no.2 is claiming, was validly married to deceased Shankarrao. So far as that aspect of the matter is concerned,

the only pleadings to be found is that:-

> "The said second marriage was performed at Pachawandeshwar Temple and after the marriage the both started residing in the said premises. The said Smt.Vaijanta was also helping her husband in his business."

There is no pleading about date and the time of the marriage. It is not pleaded as to whether any priest was present for performing the marriage. It is not pleaded according to which rites and religion the marriage was performed, which were the ceremonies performed at the time of the marriage. If the parties were Hindus by religion, it is necessary for Respondent no.2 first to plead the necessary ingredients of valid Hindu marriage. In support of the claim that there was a marriage performed, a certificate issued by the Village Panchayat is produced, which is dated 15.10.1996. The date of the death of the deceased Shankarrao is 10.7.1996. Obviously, this certificate has been issued after the death of said Shankarrao. The certificate, firstly, is issued by the Village Panchayat and I have not been shown anything which empowers the Village Panchayat to issue a certificate of marriage. The second thing is that this certificate does not disclose the date on which the marriage was performed. The certificate issued by the Village Panchayat can hardly be said to be a proof of marriage

specially when there are no pleadings as to how a valid marriage was performed between the deceased Mr.Shankarrao and Smt.Usha. In my opinion, therefore, in the absence of necessary pleadings in order to constitute valid marriage between the deceased Shankarrao and Vaijanta @ Ranjana @ Usha, the case of the petitioner who is a real brother of the deceased Shankarrao has to be accepted. The petition, therefore, is granted in terms of prayer clause (a). The petition is disposed of.

At this stage a request is made for stay of the operation of this order. The request is rejected.